

MORGANTOWN BOARD OF ZONING APPEALS

MINUTES

February 21, 2007

6:30P.M.

City Council Chambers

Members Present: Bernie Bossio, Jim Rockis, and Mark Furfari

Members Absent: Nick Iannone and Jim Shaffer

Staff Present: Christopher Fletcher, Planning Director.

MATTERS OF BUSINESS:

A. Election of Leadership

- i. Motion to nominate Bernie Bossio as chair by Rockis, second by Furfari. Motion carried unanimously.
- ii. Motion to nominate Nick Iannone as vice chair by Furfari, second by Rockis. Motion carried unanimously.

B. Motion to approve the December 20, 2006 minutes by Furfari, second by Rockis. Motion carried unanimously.

C. January 17, 2007 minutes were postponed to the next meeting.

OLD BUSINESS: None

NEW BUSINESS:

A. **V07-04 / Sahara Café / 240 Walnut Street:** This application was been withdrawn by applicant.

B. **V07-07 / March-Westin Company / 215 Don Knotts Blvd:** Request by March-Westin Company, Inc. on behalf of Waterfront Partners, LLC, for an expansion of a nonconforming structure at 215 Don Knotts Blvd, Suite 110. Tax Map #49 parcel #25; an I-1, Industrial District.

Fletcher read the staff report stating that the applicant proposes to enclose the existing patio area (approximately 633.56 ft²) at the southwest corner of the building. An enclosure of the patio requires compliance with all setbacks requirements. The minimum rear yard setback for the subject realty is thirty (30) feet.

The current structure has a rear yard set back of approximately 18.08 feet. Prior to the January 3, 2006 zoning amendment, the minimum rear yard set back for the subject realty was fifteen (15) feet. The proposed enclosure of the existing patio will have a rear yard set back of 4.75 feet.

According to Article 1373 of the Planning and Zoning Code, variance approval by the Board is necessary when an expansion of a non-conforming structure increases the extent of its non-conformity. To enclose the subject patio, the Board must grant a 25.25-foot rear yard variance.

Fletcher discussed the renderings of the proposed enclosure, the responses to the findings and facts, a reduced site plan with highlighted areas, two renderings submitted by the petitioner, and photographs taken by staff of the site.

Phil Weser, representative for March-Westin and owner of restaurant, stated the patio area is currently there and that they only want to enclose it for additional space.

Rockis requested clarification to findings of fact, question #1.

Weser stated that the area around the property is restricted by the rail-trail and gas lines. The use of current space would be most sensible.

Fletcher pointed out on the site plan where the gas line easement is located and concurred that the easement restricted expansion to the south of the existing structure.

Rockis also requested additional information for question #2 of the findings of fact.

Weser affirmed that like other restaurants having the advantage of the rail-trail scenery, they are hoping to attract people from the trail.

Rockis commented if any other businesses in the area currently have that advantage.

Weser gave examples of other restaurants.

Furfari asked the size of the current restaurant space.

Weser stated the space is 1900 ft² of gross area, including the kitchen.

Furfari asked the size of the addition.

Weser stated it is about 600 ft² total.

Bossio asked about parking for the addition.

Weser stated the original plans were for a restaurant.

Furfari asked if this needs to be looked at for conditional use for private club.

Fletcher advised that the structure and uses were approved prior to the January 6, 2006.

Findings of Facts:

1. Question - There are exceptional or extraordinary circumstances or conditions applicable to this property or the intended use that generally do not apply to other properties or uses in the same vicinity because;

Answer – The gas line and related easement running along the south side of the existing building does not permit an addition to be constructed that would conform to the zoning

district's building envelope requirements thereby leaving only the proposed patio enclosure as a means to address expansion needs.

Motion to find in the affirmative by Rockis, second by Furfari. Motion carried unanimously.

2. Question – The variance is necessary for the preservation and enjoyment of a substantial property rate that is possessed by other properties in the same vicinity and zoning district which is denied to this property because:

Finding – (revised) There are other existing restaurant establishments that enjoy a similar proximity, access, and orientation to the public rails-to-trails facility.

Motion to find in the affirmative by Rockis, second by Furfari. Motion carried unanimously.

3. Question – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning districts in which the subject property is located because:

Finding – The proposed project will enhance the existing building by extending new architectural views for people along the rails-to-trails facility. It will also add to the new architecture seen in buildings throughout the general wharf area.

Motion to find in the affirmative by Rockis, second by Furfari. Motion carried unanimously.

4. Question – The granting of this variance will not alter the land use characteristics of the vicinity of the zoning district, or diminish the market value of adjacent properties, or increase the traffic congestion on public streets because:

Finding – Although the proposed addition will extend closer to the rear setback that allowed within the zoning district, it is still considerably far from the trail. It will not alter the land use of surrounding properties. The addition adds more architectural features like many of the other new buildings within the general area.

Motion to find in the affirmative by Rockis, second by Furfari. Motion carried unanimously.

Motion by Rockis to grant rear yard setback variance as requested; second by Furfari. Motion carried unanimously.

- C. CU07-01 / Currey / 357-361 High Street:** Request by Kevin Currey for conditional use approval from for a “Restaurant, Private Club” use in the B-4 District at 357-361 High Street. Tax Map #6A Parcel #98; a B-4, General business District.

Fletcher read the staff report stating that Mr. Kevin Currey seeks to open a “Restaurant, Private Club” use called *KC Chillers* in the former location of DeVincent’s Music at 357-361 High Street. The petitioner submitted a business description that characterizes the proposed establishment. The petitioner also submitted a resume as well as job descriptions for various positions that he purports to have held with Boston Beanery.

The “Restaurant, Private Wine” and “Tavern” uses are permitted by right in the B-4 District. Mr. Currey seeks to sell liquor in addition to beer and wine, which changes the use classification to “Restaurant, Private Club.”

Article 1331.06 (27) of the Planning and Zoning Code, Supplemental Regulation Pertains to Permitted Land Use Table provides the applicable performance standards. Fletcher read those

standards to the Board and stated that the BZA packet included the application, a business description, a proposed menu, Mr. Currey's resume, job descriptions, and photographs of the building.

Kevin Currey gave the Board members a more detailed layout and menu addition. Mr. Currey also stated he is petitioning for a liquor license and explained his work with the Boston Beanery. Mr. Currey added that in his tenure with other restaurants, they have never been cited by the West Virginia Alcohol Beverage Control.

Terri Cutright, Executive Director of Main Street Morgantown, spoke in favor of the proposal stating it would be a nice addition to the Met Theater. She added that this would add to the overall dining district based on selection of the menu and by the addition of a breakfast menu, which currently does not exist, grouped with meeting space. This proposal would also create jobs in the downtown area.

Ralph Larue, 264 Franklin Street, also spoke in favor of the proposal; he stated that the business would compliment the area by having the store front filled.

Charles McQueen, 324 Granville Avenue, believes this restaurant will be an asset to the area. Mr. McQueen is in support of increased business in the downtown area.

George Papandreas, 41 Euclid Avenue, South Park, the owner of the building, believes that the business, which is next to the Met, must be very particular. He believes this restaurant having a breakfast menu and space for meetings will revive the morning hour traffic.

Furfari asked Mr. Currey why the need for liquor.

Mr. Currey stated this would bring the experience as a whole to the downtown area and it is meant to enhance the dining experience. He continued that he is looking at providing the total package when the establishment opens for business.

Furfari asked Mr. Currey why the name "Chillers"; that this would suggest drinking.

Mr. Currey added that it came from looking for a place where young professionals could go to network, or have after-hours business meetings. He stated that the Boston Beanery had that type of clientele previously while he was a manager, but was lost due to the students. He hopes to regain that atmosphere.

Furfari asked about the size of the kitchen.

Mr. Currey stated the kitchen will only be for menu items to be cooked, there is storage on the bottom floor, along with offices.

Furfari asked where the exhaust would be located.

Mr. Currey explained and showed Mr. Furfari on the drawings.

Furfari asked if this would be a smoking or non-smoking.

Mr. Currey stated that one side is proposed to be enclosed around the bar area with ventilation. The restaurant would not be smoking.

Furfari asked about menu pricing.

Mr. Currey stated the original menus were just rough drafts. He has provided actual menus that do not have prices on them, but the average check would be \$12.00-\$18.00 per person.

Rockis asked Mr. Currey to clarify the location of the storage area.

Mr. Currey advised it would be in the basement area on both sides. Both will be used for storage, walk-in coolers, etc.

Rockis asked the Planner if Mr. Currey meets the criteria to obtain a liquor license.

Fletcher stated that this would be up to the Board. Fletcher gave the three qualifiers for a liquor license in the B-4 District. 1) Has the business been open for one year – no; 2) Has he owned a similar facility for a year – no; and 3) The Board may authorize a waiver for the facility.

Bossio stated that the presentation was done very well. The information provided gave a complete overview of the intent of the business. He agrees with Mrs. Cutright that it would be an asset to the community.

Furfari stated he thinks there may be an issue with the business being located between the Met and an adjacent nightclub. The nightclub could cause foot traffic to back up in front of the business.

Fletcher stated the Fire Department has required the nightclub to direct sidewalk staging for waiting patrons because of the existing fire door for the adjacent nightclub. If this business goes in, the fire and police departments have confirmed that patrons waiting to enter the adjacent nightclub must be disbursed and will not be allowed to stand in front of the proposed establishment.

Furfari stated that is in favor of the waiver, however, he would find it hard not to approve someone else for the same thing.

Bossio agreed and stated that they too would need to submit all of the information to support the request. He followed up by stating that Mr. Currey's history in management has also added to the influence.

Fletcher read the staff recommendations that stated The Board of Zoning Appeals must first determine whether or not it will waive the one-year "bona fide restaurant" requirement [Article 1331.06 (27)(c)] prior to the petitioner obtaining a liquor license from the West Virginia Alcohol Beverage Control Commission. As noted earlier, the petitioner has submitted a resume indicating that he has been employed with Boston Beanery since 1994. The Planning Department obtained verification of Mr. Currey's employment, which was included in the attachments at the end of the staff report.

Should the Board waive said requirement, then it must determine whether the proposed request meets the standard criteria for a conditional use by reaching a positive determination for each of the "Findings of Fact" submitted by the applicant.

Staff concurs with the findings of fact submitted by the applicant concerning the proposed "Restaurant, Private Club" use. Mr. Currey's request for a waiver of the one-year period appears to be generally consistent with a recent waiver granted by the Board for "Mercury" on September 21, 2005.

Should the Board waive the one-year "bona fide restaurant" requirement and grant approval of the subject conditional use petition, Staff recommends that the following conditions be included:

1. That the petitioner shall maintain compliance with all supplemental regulations set forth in Article 1331.06 (27) of the Planning and Zoning Code. That the establishment shall not serve liquor, including wine, later than 1:00 a.m., except on New Year's Eve.
2. That the petitioner shall submit, to the satisfaction of the Planning Director, a scaled-drawing of the interior layout for the proposed establishment that represents the petitioner's preliminary drawing submitted with the conditional use application documents. That said scaled-drawing shall illustrate adequate interior layout and specific seating arrangement for no less than fifty (50) persons as set forth in Article 1331.06 (27) (f) of the Planning and Zoning Code. That said scaled-drawing shall be submitted with all related City building permit applications and all necessary permit and/or license applications with the West Virginia Alcohol Beverage Control Commission. That said interior layout and seating arrangement shall meet or exceed all related fire and building codes. That approval by the Board must be granted for any material deviation in the interior layout and seating arrangement illustrated in the petitioner's preliminary drawing that was submitted with the conditional use application documents.
3. That the applicant must obtain permitting as a "restaurant" from the Monongalia County Health Department under the *Monongalia County Clean Indoor Air Regulations*.
4. That the basement or any other interior portion of the subject building that was not illustrated in the petitioner's preliminary drawing submitted with the conditional use application documents shall not be used for anything other than kitchen and/or storage without first obtaining approval by the Board.
5. That the subject establishment shall not for a period of one (1) year following the issuance of the subject establishment's Certificate of Occupancy serve or otherwise permit the consumption of alcohol within any existing or contemplated outdoor area.
6. That the currently contemplated outdoor area to the rear of the building shall not be created, improved or otherwise used by the subject establishment until the improvements of such area are reviewed and approved by the Downtown Design Review Committee and the Planning Director. That said area shall meet or exceed all related building and fire codes prior to use thereof. That potential seating in such area shall not be used in calculating minimum seating requirements as set forth in Article 1331.06 (27) (f) of the Planning and Zoning Code.
7. That any exterior building modifications shall be reviewed and approved by the Downtown Design Review Committee and the Planning Director prior to building permit issuance for same.

8. That any regulated signage shall be reviewed and approved by the Downtown Design Review Committee and the Planning Director prior to building permit issuance for same.
9. That the conditional use approval granted herein may not be transferred.

Findings of Facts:

1. Question - Congestion in the streets is not increased, in that:
Finding – There is access to Municipal car parking with parking garage behind building on Chestnut Street and access to Spruce Street garage. The district does not require parking.
Motion to find in the affirmative by Rockis, second by Furfari. Motion carried unanimously.
2. Question – Safety from fire, panic, and other danger is not jeopardized, in that:
Finding – The building has numerous exits and will conform to fire and building regulations.
Motion to find in the affirmative by Rockis, second by Furfari. Motion carried unanimously.
3. Question – Provision of adequate light and air is not disturbed, in that:
Finding – Structure changes to building will enhance lighting and air that will meet regulations.
Motion to find in the affirmative by Rockis, second by Furfari. Motion carried unanimously.
4. Question – Overcrowding of land does not result, in that:
Finding – Existing space will only be used, no new exterior expansion.
Motion to find in the affirmative by Rockis, second by Furfari. Motion carried unanimously.
5. Question - Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:
Finding – Building was used as commercial building by previous tenant
Motion to find in the affirmative by Rockis, second by Furfari. Motion carried unanimously.
6. Question – Value of buildings will be conserved, in that:
Finding – Building will be upgraded by remodel into restaurant, preserving and enhancing historic relevance of the building.
Motion to find in the affirmative by Rockis, second by Furfari. Motion carried unanimously.
7. Question – The most appropriate use of land is encouraged, in that:
Finding – It is commercial building in the district that will be brought back to life.
Motion to find in the affirmative by Rockis, second by Furfari. Motion carried unanimously.

Motion to approve the request with conditions as stated and revised by Rockis, second by Furfari. Motion carried unanimously.

D. CU07-03 / Wubbie Development Group / 211 Willey Street: Request by Wubbie Development Group, LLC for conditional use approval for a “Multi-family Dwelling” use in the B-4 District at 211 Willey Street. Tax Map #26 Parcel #119; a B-4, General Business District.

Fletcher read the staff report stating that the applicant seeks to convert the old Masonic Lodge building at 211 Willey Street into a multi-family residential use containing sixteen (16) dwelling units. The proposed reuse will not include a non-residential or commercial component.

Table 1331.05.01 “Permitted Land Use Table” of the Planning and Zoning Code provides that “Multi-family Dwellings” are a Conditional Use in the B-4 District.

With the exception of a brief occupancy by the Chestnut Ridge Church, the structure has remained largely vacant since 2001 when the Morgantown Union Lodge No. 4 A.F. & A.M. relocated to the corner of Burroughs Street and Windsor Street.

Article 1349.06, “Parking and Loading Standards” of the Planning and Zoning Code states that parking is not required for the B-4 District.

Michael Shuman represented the project.

Bossio acknowledged that he had been part owner of that particular building and asked Mr. Shuman if he had any issues with him voting on this issue.

Mr. Shuman stated he did not and continued to add that the building was used briefly as a youth center. Due to the location and lack of parking this property would not be beneficial as a business. The best use of the property would be for residential.

Mr. Shuman was asked if he was aware of the proposed project next door.

Mr. Shuman stated yes.

Furfari asked Mr. Shuman if he had attempted to rent the property since his purchase of the property.

Mr. Shuman stated it had been posted but not rented.

Rockis asked what other buildings in town Mr. Shuman operates.

Mr. Shuman stated 387 High Street and 409 High Street (Slight Indulgence and Sugar Britches).

David Howell, 235 Ridgeley Road, stated that he is currently working on the building and stated the cost to put commercial in the building would not be financially sound.

Furfari stated that he does not believe apartments are appropriate for the top of High Street. The first two floors should follow the commercial requirement. He was not in favor because of the history of the building.

Bossio gave pros and cons for the project.

Rockis stated he could go either way, and gave examples of other properties where hardships were created.

Furfari commented that he sees a Morgantown landmark with a lot of character and turning this into student housing would be a mistake.

Rockis stated that it is a reasonable point but asked what could be done with the building if it can not be used now.

Furfari stated that structures are being changed continuously to meet the need for housing; he does not believe that this was a structure he wants to see as housing.

The issue of parking was discussed in relation to the use of the building.

Furfari commented that the building was not built for housing.

Bossio commented that there was a commercial building by the Walnut Street Bridge and turned it into housing.

Bossio asked if Furfari would accept the first floor as commercial and the other residential.

Furfari stated he would still not be in favor.

Rockis stated that it is a good location and it would be usable as apartments.

Bossio asked the Board to allow Mr. Shuman to see if he would be willing to have the item tabled.

Mr. Shuman stated that there is no other use they can see. The parking in the area is taken by the students. The first floor of the building sits 10-12 feet above the street. There are no other businesses on that side of the street except a law firm. The building sits too close to a church to allow alcohol for a restaurant, retail wise there are two small windows that restructure would be restricted by the historical society. The building is not visible from Willie Street so signage could be an issue.

It was asked where the signs posted and how long were they posted.

Mr. Shuman stated on the building and in the yard and they were posted for 30-45 days.

It was then asked of Mr. Shuman if he advertised in the paper or with any kind of realty company.

Mr. Shuman advised no.

Fletcher stated he had spoken with Barbara Rasmussen regarding keeping commercial at that level accessed by the door facing Wiley Street. Fletcher explained the route to make the this floor commercial. Ms. Rasmussen made it clear that she was not in favor of those changes because it would ruin the character of the building.

Furfari commented that if someone builds next door in the vacant lot it would block all of the windows to the apartments.

Fletcher commented that he did not think it could be approved according to the fire code.

Rockis stated that it is something that needs to be looked and also, and suggest checking with Terri Cutright.

Bossio asked Mr. Shuman if Terri Cutright is aware of the proposal and is she in favor of the project.

Mr. Shuman stated that she was supportive when he has talked to her.

Rockis stated that he does not have a problem with apartments on the upper floors, but the first floor he could go either way.

Bossio stated that he could also go either way.

Fletcher asked if the Board could make a recommendation to the petitioner regarding a preferred percentage or square footage reserved for non-residential use.

Rockis suggested gathering information and having a discussion to talk about future issues.

Furfari clarified that Mr. Shuman knew upon purchase the zoning and codes for the property.

Mr. Shuman stated yes, it was purchased with the intent of apartments and he did know the zoning restrictions.

Furfari asked how many floors.

Mr. Shuman advised there would be four levels.

Rockis stated he would prefer to table and to gather more information and ask that Terri Cutright be present to address the intentions of maintaining non-residential use at the sidewalk. He would also like to find out the requirements regarding the windows in relation to the fire code.

Motion to table until next month by Rockis, second by Furfari. Motion carried unanimously.

After reviewing the project file, Fletcher noted that 32 neighbor notification letters were sent by the Planning Department for this petition.

Bossio advised Mr. Shuman that if the information was not available at the next meeting it would be tabled again.

OTHER BUSINESS:

Public Comments: None

COMMENTS FROM BOARD MEMBERS AND STAFF: Fletcher advised he had given the Board members an annual report that included Planning Department case information for the last three years. Fletcher also gave a copy of the highlights and handouts from Mr. Joe Fisher's presentations [West Virginia University's Master Facilities Plan Update].

ADJOURNMENT – 8:35 PM.